Supreme Court, U.S.
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NO. 01-688

IN THE

Supreme Court of the United States

DAIMLERCHRYSLER CORPORATION, INC.,
Petitioner,

v.

URSULA GIBSON, *et al.*,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether, in the absence of a relevant conflict among the lower federal courts, this Court should review the Ninth Circuit's ruling that federal jurisdiction may be exercised over a diversity class action only when at least one named plaintiff satisfies the amount-in-controversy requirement of 28 U.S.C. § 1332.

2. Whether this Court should review the uniform rule in the federal courts of appeals that class members' punitive damages claims may not be aggregated to satisfy the amount-in-controversy requirement.

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INTRODUCTION

There is undoubtedly a conflict among the circuits over whether 28 U.S.C. § 1367 partially overrules *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), and provides supplemental jurisdiction in diversity cases over claims of class members that do not satisfy the amount-in-controversy requirement—if a named plaintiff's claims satisfy that requirement. But this case does not present that conflict and is not the proper vehicle for resolving it. Indeed, the Ninth Circuit *agreed* with petitioner that § 1367 overruled *Zahn*'s holding that each class member must satisfy the amount-in-controversy requirement. Even so, the Ninth Circuit ruled against petitioner because there are independent reasons why there is no federal jurisdiction over the class claims in this case. On the dispositive issues, there is no conflict among the circuits, and no reason for this Court to grant certiorari.

I.

THIS CASE IS A PROCEDURALLY INAPPROPRIATE VEHICLE FOR CONSIDERING WHETHER § 1367 OVERRULES *ZAHN*

This case comes to the Court in a peculiar procedural posture, such that the issue of federal jurisdiction over the underlying class claims is only indirectly presented. The case was originally filed in state court, and petitioner twice unsuccessfully attempted to remove it. Each time, the district court remanded. Remand orders are, of course, unappealable. 28 U.S.C. § 1447(d). Following the second remand, the state action was eventually dismissed, without plaintiffs ever filing a class certification motion.

After petitioner's second successive improper removal, however, the district court sanctioned petitioner under Rule 11 and ordered payment of respondents' attorney fees under 28 U.S.C. § 1447(c). Because only the imposition of sanctions and fees was appealable, only that subject was before the Ninth Circuit in this case.

The Ninth Circuit reversed the award of sanctions, holding that because petitioner's arguments concerning *Zahn* were not frivolous, they could not be the basis for Rule 11 sanctions. Thus, the only issue that remains is whether the Ninth Circuit correctly held that the district court did not abuse its discretion in awarding respondents the fees they incurred as a result of remand. The Ninth Circuit's ruling that the fee award was proper was not, however, based on the court's resolution of the *Zahn* issue. Rather the court ruled that even granting that § 1367 overruled *Zahn*, supplemental jurisdiction over class members' claims that fell below the jurisdictional amount could only be exercised if there was a *named* class member whose claims satisfied the amount-in-controversy requirement—which there concededly was not. The court of appeals' statements about the merits of the *Zahn* issue were therefore unnecessary to its holding. The Ninth Circuit also ruled that the class members' individual punitive damages and attorney fee claims could not be aggregated to satisfy the jurisdictional amount. Thus, the Ninth Circuit reasoned, the removal had been improper, and an award of attorney fees under § 1447(c) was a permissible exercise of the district court's discretion.

At best, therefore, the question whether § 1367 overrules *Zahn* is theoretically present in this case only to the extent that a resolution of that question adverse to petitioner would constitute an alternative ground for sustaining the Ninth Circuit's affirmance of the district court's fee award. But the *Zahn* issue would only need to be reached if the Ninth Circuit were incorrect in its ruling that at least one named plaintiff must satisfy the amount-in-controversy requirement, and, as shown below, there is no reason for this Court to review the correctness of the Ninth Circuit's decision on that point.

Moreover, even if petitioner were to prevail both on the named plaintiff issue and on the *Zahn* issue, the result would not be a judgment in its favor on the fee award. Rather, the case would still have to be remanded for a determination

whether the district court's remand order was correct, which, in turn, would require a factual finding as to whether any unnamed class member had a claim exceeding $75,000. That would probably at least require establishing not only that some absent class member had numerous Chrysler vehicles, but also that they had all manifested damage and that the resulting claim reached $75,000. Discovery and factfinding concerning the value of claims in a never-certified and now-dismissed class action would hardly constitute a worthwhile use of federal judicial resources.

II.

THE COURTS AGREE THAT A NAMED PLAINTIFF IN A DIVERSITY CLASS ACTION MUST SATISFY THE AMOUNT-IN-CONTROVERSY REQUIREMENT

Petitioner urges this Court to consider the Ninth Circuit's holding that the claims of one or more named plaintiffs must reach the jurisdictional amount, but identifies no basis upon which that issue merits this Court's attention. Whatever the status of *Zahn* following the enactment of § 1367, the federal courts of appeals are unanimous in agreeing that *at least one named plaintiff* must satisfy the amount-in-controversy requirement for a federal court to entertain a diversity-based class action.

Of course, in those circuits that have held that *Zahn* survives § 1367 in its entirety, the named plaintiffs, like all the other class members, must each have claims that reach the jurisdictional amount. *See Trimble v. Asarco, Inc.*, 232 F.3d 946 (8th Cir. 2000); *Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214 (3d Cir. 1999); *Leonhardt v. Western Sugar Co.*, 160 F.3d 631 (10th Cir. 1998).

The circuits that have held that § 1367 overruled *Zahn* also agree that at least one named plaintiff must satisfy the amount-in-controversy requirement. In *In re Abbott Laboratories*, 51 F.3d 524 (5th Cir. 1995), *aff'd by an equally divided Court*, 529 U.S. 333 (2000), the Fifth Circuit empha-

sized that the claims of the named plaintiffs did exceed the jurisdictional amount, *id.* at 526-27, and held that in such circumstances, "a district court can exercise supplemental jurisdiction over members of a class, although they did not meet the amount-in-controversy requirement, *as did the class representatives*." *Id.* at 529 (emphasis added).

Similarly, the Seventh Circuit, while holding that § 1367 displaced *Zahn*'s ban on supplemental jurisdiction over class members whose claims do not reach the jurisdictional amount, has stressed that "*[a]t least one named plaintiff must satisfy the jurisdictional minimum.*" *In re Brand Name Prescription Drugs Antitrust Litigation*, 123 F.3d 599, 607 (7th Cir. 1997) (emphasis added). And the Fourth Circuit, the latest court to hold *Zahn* overruled by § 1367, has agreed "that § 1367 confers supplemental jurisdiction in diversity class actions, *so long as one named plaintiff has a claim giving a federal court original jurisdiction.*" *Rosmer v. Pfizer Inc.*, 263 F.3d 110, 114 (emphasis added), *reh'g and reh'g en banc denied*, __ F.3d __ (4th Cir. 2001).

In short, regardless of their views on *Zahn*'s continued vitality, all the federal courts of appeals that have addressed the issue have agreed with the Ninth Circuit that federal jurisdiction may not be exercised over a diversity class action unless at least one named plaintiff satisfies the amount-in-controversy requirement. A leading commentator agrees with the courts. 5 James Wm. Moore, *et al.*, *Moore's Federal Practice* § 23.07[3][c] at 23-47 (3d ed. 1998) ("[E]ven if 28 U.S.C. § 1367 reverses *Zahn* ... the statute does not permit supplemental jurisdiction over a class action in which *unnamed* class members meet the amount-in-controversy requirement, but the named plaintiff does not.") (emphasis in original); *see also* 14B Charles A. Wright, *et al.*, *Federal Practice and Procedure*, § 3704, at 172-73, n. 84 (3d ed. 1998) (citing cases).

By contrast, petitioner cites not one federal case at any level that supports its position that supplemental jurisdiction may be invoked to support federal jurisdiction over an uncertified class action in which the named plaintiffs do not satisfy the amount-in-controversy requirement. Given the complete absence of any support for petitioner's position on the dispositive issue, this Court should not undertake to review the Ninth Circuit's holding on this point. And because a grant of certiorari on this independent issue, *and* a resolution of it contrary to the lower federal courts' uniform rulings, would be necessary before this Court could reach the *Zahn* issue (and before petitioner could prevail in this case), review of the *Zahn* question should be denied as well.

III.

THERE IS NO REASON TO REVIEW THE NINTH CIRCUIT'S HOLDING THAT PUNITIVE DAMAGES CLAIMS MAY NOT BE AGGREGATED TO SATISFY THE JURISDICTIONAL AMOUNT

Petitioner also seeks review by this Court of its alternative theory of federal jurisdiction—namely, that even if none of the individual plaintiffs has a claim that reaches the jurisdictional amount, the punitive damages claims of all the class members may be aggregated to satisfy the amount-in-controversy requirement. Petitioner contends that this issue has produced disarray in the federal courts of appeals. But petitioner's attempt to conjure up some disagreement among the lower courts on this issue cannot obscure one fundamental fact: *The courts of appeals unanimously agree that punitive damages sought by a class may not be aggregated to satisfy the amount-in-controversy requirement.*

Petitioner's attempt to obfuscate this issue rests on decisions of the Fifth and Eleventh Circuits that those courts have subsequently disavowed. In *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326 (5th Cir. 1995), and *Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353 (11th Cir. 1996), panels of those circuits

held that, under the laws of Mississippi and Alabama, respectively, members of a class had a "common and undivided interest" in a punitive damages award, and thus a claim for punitive damages on behalf of a class could be aggregated to reach the jurisdictional amount.

Subsequent panels of both the Fifth and Eleventh Circuits, however, have recognized that the holdings of *Allen* and *Tapscott* are inconsistent with a prior ruling of the old Fifth Circuit, *Lindsey v. Alabama Telephone Co.*, 576 F.2d 593 (5th Cir. 1978), which forbids aggregation of punitive damages claims regardless of peculiarities of state law. In both the Fifth and Eleventh Circuits, any conflict between the decisions of two or more panels is resolved in favor of the earliest one to address the issue. Thus, in both circuits, the rule of *Lindsey* remains binding, and punitive damages claims on behalf of a class may not be aggregated for purposes of the amount-in-controversy requirement. *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000), *cert. denied*, 122 S. Ct. 214 (2001); *Smith v. GTE Corp.*, 236 F.3d 1292, 1300 (11th Cir. 2001); *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1264 (11th Cir. 2000); *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1072 (11th Cir. 2000).*

The rules prevailing in the Fifth and Eleventh Circuits are thus entirely consistent with the rule applied by the Ninth

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* Even if there were uncertainty regarding the status of *Allen* and *Tapscott* in their respective circuits, that would be a matter for those circuits to consider en banc, not a basis for a grant of certiorari by this Court—as this Court's recent denial of certiorari in *H&D Tire* helps confirm. Moreover, even if *Allen* and *Tapscott* remained good law in the circuits that issued them, they would be of little assistance to petitioner because they turn on state law regarding punitive damages, and petitioner has not established that punitive damages claims are "common and undivided" as a matter of California law, which applies here. In any event, the characterization of such claims as a matter of state law would hardly be an issue meriting this Court's attention.

Circuit in this case, as well as holdings of the Second, Seventh, Eighth and Tenth Circuits. *See* Petition at 22. By contrast, the petitioner cites *no* appellate decisions (aside from the discredited panel holdings in *Allen* and *Tapscott*) that support its position. Thus, as petitioner grudgingly acknowledges (Petition at 22), all seven courts of appeals that have addressed the issue have reached the same result.

Seeking to make a virtue of necessity, petitioner argues that because so many courts of appeals have rejected its position on this issue, "further percolation" of the issue is unnecessary. Petition at 22. But the reason review should be denied here is not that the issue is a novel one that needs to "percolate" through the courts. Rather, the reason this Court should decline review is that the rule in question is a settled one that does not pose a conflict demanding resolution.

Petitioner's principal remaining argument for review of this issue is that the decision below is incorrect. Of course, the alleged incorrectness of a rule on which the courts of appeals are in broad agreement is not a compelling basis for a grant of certiorari. In any event, petitioner's contention that the decision below is wrong is unpersuasive.

This Court has long held that the individual claims of class members cannot be aggregated to satisfy the jurisdictional amount requirement unless the claim of the class is a joint claim to a recovery in which the plaintiffs "have a common and undivided interest." *Snyder v. Harris*, 394 U.S. 332, 335 (1969). As Judge Posner has explained, however, claims of multiple plaintiffs for punitive damages are not "common and undivided" because "[a] plaintiff's award of punitive damages is not limited by awards made to previous plaintiffs complaining of the same act of the defendant." *In re Brand Name Prescription Drugs*, 123 F.3d at 608-09. Although there arguably may be a constitutional limit at some point to the "piling on of awards by different courts for the same act," this argument "is unlikely to succeed to the point

of converting entitlements to punitive damages from individual to collective entitlements." *Id.* at 609. Until at least one appellate court accepts the dubious notion that punitive damages claims are collective, there is no reason for this Court to address the issue.

Finally, petitioner suggests that the Court should address the aggregation of punitive damages issue because of its supposed "interconnection ... to the *Zahn*/1367 question." Petition at 22. The "interconnection," however, seems to have eluded the federal courts of appeals, since even those courts that have disagreed on the *Zahn*/1367 issue (for example, the Seventh and Tenth Circuits) have agreed that punitive damages claims may not be aggregated. In any event, any alleged "interconnection" of the punitive damages issue to the *Zahn* issue hardly justifies review in this case, since, as explained above, the *Zahn* issue itself is not properly presented.

IV.

THIS COURT NEED NOT GRANT REVIEW TO PROVIDE "GUIDANCE" TO THE LOWER COURTS CONCERNING JURISDICTIONAL DISCOVERY

Finally, petitioner suggests that the Court grant review to provide "guidance" to the district courts concerning discovery on jurisdictional issues. Petition at 28. But the case hardly presents an occasion for providing such guidance, since the Ninth Circuit did not address any questions about the scope of discovery. Moreover, on the dispositive issues, no discovery was necessary. As the Ninth Circuit stated, petitioner did "not contend that any of the named plaintiffs in this case has an individual claim for damages that exceeds $75,000." Petition App. 22a. Thus, there was clearly no need for discovery on that point. And the question of aggregation of punitive damages is a pure issue of law, as to which no discovery would be relevant. Petitioner's plea for an advisory opinion on jurisdictional discovery thus adds nothing to its argument that the case merits this Court's attention.

CONCLUSION

Petitioner seeks to bootstrap a conflict over an issue not properly presented into a grant of certiorari on questions that do not merit the Court's attention because the courts of appeals are in complete agreement on them. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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